

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A
JUDGE, NO. 00-211

Supreme Court Case No.

_____/

NOTICE OF FORMAL CHARGES

TO: The Honorable Howard C. Berman, Circuit Judge, Fifteenth Judicial Circuit,
Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach,
Florida 33401-4522

YOU ARE HEREBY NOTIFIED THAT the Investigative Panel of The Florida
Judicial Qualifications Commission, by a vote of at least five members at its meeting
held in Miami, Florida on November 10, 2000, has determined, pursuant to Rule 6 of the
Rules of the Florida Judicial Qualifications Commission, as revised, and Article V,
Section 12(b) of the Constitution of Florida, that probable cause exists for formal
proceedings to be instituted against you.

Formal proceedings accordingly are hereby instituted to inquire into the following
charges:

General Allegations

1. Beginning not later than 1994 and continuing until at least June 2000, you
have engaged in speech, gestures, and other conduct directed toward
women who were employed in the judicial system in Palm Beach County
and who appeared before you, which actions constituted sexual
harassment or could reasonably be perceived by those women as sexual
harassment. Further, you have threatened one or more of them to take
retaliatory action against them if they disclosed your actions, and have
thereafter falsely denied your conduct upon inquiry by supervisors of one

or more of these women. These actions on your part are specifically set forth in the following paragraphs 2 through 21 inclusive.

Harassment of Jo Ann B. Kotzen

2. In 1994 Jo Ann Barone, Esquire served as an assistant public defender handling misdemeanors and other cases in the County Court of Palm Beach County and Circuit Court of the Fifteenth Judicial Circuit of Palm Beach County. (Ms. Barone later married and presently is known as Jo Ann B. Kotzen, and is designated herein as Ms. Kotzen.) At this time in 1994 you were assigned to a felony division of the Circuit Court, and saw Ms. Kotzen from time to time at various bar association meetings. In 1996 you began inviting her to date you, which she declined to do.
3. Thereafter, in June 1996 Ms. Kotzen was assigned to serve in your division. When she informed you of this new assignment, you became upset, and told her, "I have the hots for you. Everyone knows I have the hots for you. It's a big conflict, go back and tell them you can't be in my courtroom." Her supervisor declined to transfer her, and on June 24, 1996, she began to appear in your division.
4. At this time you began telephoning her on her direct office line, including on nights and weekends, making sexually suggestive comments, among other things, saying you wanted to see her, and inviting her to your chambers. In these calls you inquired which undergarments she was then wearing. You also continued to make indecent remarks to her in your chambers or in courthouse corridors such as, "I could be screwing you right now, and I wouldn't treat you any differently in the courtroom," and "You are a diamond in the rough." You further told her that you could help her if she would go to bed with you.
5. Later in 1996 Ms. Kotzen then confronted you in your chambers, and requested you cease this improper behavior. You suggested she was "wearing a wire," and then told her "If you bring this up to the JQC, I will bury you." When she returned to her office, you telephoned her, stating, "You didn't even have any panties on when you were talking to me, did you?"
6. Shortly after these events, Ms. Kotzen complained about your conduct to her supervisor. When you were asked about this conduct by Ms. Kotzen's supervisor, you falsely told the supervisor that her description of these activities (as previously related above) was untrue. You then began a pattern of rude and discourteous conduct toward her in open court, causing her to be transferred from your division on August 5, 1996.

7. In January 1997, Ms. Kotzen went into private practice, and has later appeared before you. On more than one occasion you have improperly refused her an opportunity to present for your consideration plea arrangements which she has made with the prosecutors.

Harassment of Terese L. Parker

8. Beginning not later than 1997, Terese L. Parker ("Ms. Parker") has served in your division as a Correctional Probation Officer for the Florida Department of Corrections. At times when she appeared before you on official business, not later than 1997, you sought to flirt with her and to ask her personal questions. These questions included whether she was married, and was dating anyone. At various times while Ms. Parker was sitting in your courtroom waiting for her case to be called, you would make it known that you knew she was there and would announce, "Terry Parker is here," in a manner embarrassing to Ms. Parker. In 1998 while she was sitting in your courtroom waiting for her case to be called, you said from the bench, "I would like to violate Terry Parker." This was an obvious inappropriate play on words relating to a finding that a probationer had violated the terms of probation and to a sexual act. As soon as you left the bench she went to your chambers and protested your conduct. Inter alia, she said, "Don't ever do that again. You are making yourself look like an idiot and like something is going on between us." You responded by asking, "Why don't you and I get together and have a drink."
9. In late 1998 or early 1999, you began telephoning Ms. Parker approximately once a month at her office, saying that you really had to meet her for a drink, and asking if she was dating anyone. You also telephoned her at her home, asking her how she was dressed, inquiring if she were naked, and suggesting she come to your home and have sexual relations with you. In March 1999, you again telephoned her at her home stating the champagne was chilling, and the fire was roaring, and inviting her to come to your house.
10. Ms. Parker was in your chambers on official business about March 1999. At the time you put your hand on her knee and said, "I would like to see you naked". She sought unsuccessfully to strike you, and said, "You're perverted." You responded, "No, I just like women and sex."
11. During the spring of 2000, on a Saturday evening, you called the residence of Ms. Parker. Her eight-year-old daughter answered the telephone. When Ms. Parker picked up the other telephone, you asked, "Where have you been? What are you wearing? Are you naked? Why don't you come over and have sex?" Ms. Parker refused your invitation and hung up. She then discovered that her eight-year-old daughter had been eavesdropping

on the other telephone, which caused great emotional distress to both of them.

Harassment of Roxanne M. Ramos

12. Roxanne M. Ramos is a Correctional Probation Officer for the Florida Department of Corrections. She has been so employed since 1987, and in that capacity appears before various judges in your court, including yourself. In March 1997, she came to your office and asked you to sign a warrant. This visit coincided with the time of your birthday. When Ms. Ramos observed birthday cards on your desk and around the office, she said, "Happy birthday, judge." You responded by telling her not to just say happy birthday but to send cards or bring you chocolate. Ms. Ramos stated she also enjoyed chocolate. You then told her that her next assignment was to go to the T.J. Chocolate Store, sample a candy called "Death by Chocolate," and advise you how she liked it. You then gave her a paper listing 50 reasons why chocolate was better than sex, and stated that your three favorite things were the beach, sex and chocolate.
13. About two to four weeks later, Ms. Ramos had occasion to go to your chambers with another warrant for you to sign, and she took you a small piece of Death by Chocolate candy. You asked her "Are you flirting with me?" She responded that she was not flirting and meant no disrespect. You then responded that if she were flirting with you, you were receptive and open to her invitation. Ms. Ramos assured you she was not flirting with you.
14. In the spring or early summer of 1997, Ms. Ramos again brought a warrant to your chambers to be signed. You said to her, "So tell me, are you married? Do you have children? Are you happily married?" You asked her if she would ever consider having an affair. Later in this meeting, you said "Do you like sex? How well do you like sex?"
15. Later in 1997, Ms. Ramos again went to see you on official business and you said, "Are you sure you wouldn't consider an affair or casual sex?" to which she responded, "No sir." You then said, "Won't you just lift your shirt and let me see your breasts? Just let me look at you." You further said, "You do know that I fantasize about you and about us together." Ms. Ramos declined your requests.
16. In or about October 1997, you called Ms. Ramos at work and gave her your home telephone number. You later telephoned her again and said, "This is Howard. I called in sick today and wanted to know if you would come and make me feel better and come see me at my house." She again told you, "No, I can't do that." You then said that if she changed her mind, you would give her your address and directions to your house, and

tell her how to get past the guard at the gate. You said, "I'd like you to come see me." Ms. Ramos did not accept your invitation. Still later you called her at her office and asked her to come to your home, and said that you would be there by 4:00 p.m. on that day.

17. About December 1997, Ms. Ramos brought still another a warrant to your chambers for signature. You signed the warrant, and as she started to leave, you stood between her and the door and said, "I'm going to kiss you," and then did so. Shortly thereafter when Ms. Ramos was in your courtroom for a sentencing hearing, you saw her and said, "Before we get under way, I have a matter to see Ms. Ramos on which has nothing to do with this case." You then asked her to accompany you to your chambers, which she did, and when you got to your chambers, you said, "You look so beautiful today. Have you thought about my invitation?"
18. About the end of 1998, or the beginning of 1999, Ms. Ramos again went to your chambers to get a warrant signed and you said, "Have you reconsidered regarding casual sex? I still fantasize about you. I just want to touch you. If you came to my house, we could do everything but the actual act." Ms. Ramos refused. A week or two later your calls to her office began again, and you again asked her to come to your house.
19. On February 25, 2000, Ms. Ramos' husband asked her for a divorce and became violent toward her. She came to the courthouse to speak to another judge to obtain his advice about obtaining a restraining order and reference to a family law attorney. The other judge was not there, and while she was talking with his judicial assistant, you appeared and asked Ms. Ramos if she still worked for the probation department, as you had not seen her. You asked her how she was and she responded, "Not so well." You and she went to your chambers where she told you about her divorce problem, asked how she could get a restraining order, and inquired if you could refer her to a divorce attorney. You responded that you did not do family law, but if she would give you her home telephone number, you would try to find an attorney to recommend to her. She then gave you her cellular telephone number and her home telephone number.
20. When she was ready to leave your chambers, you took a position between your desk and the exit door and said, "I really feel bad, let me give you a hug." As you were giving her a hug, you fondled her breasts and buttocks. You then aggressively pulled her hand toward your crotch and said, "Come on. I just want you to feel what you are missing."
21. During March 2000, you persisted in telephoning Ms. Ramos approximately once a week, saying that you wanted her to come to your house, wanted her to have sexual relations with you and advised that she could put her car in your garage so no one could see it. In one call you

asked if she would come to your house and give you a birthday present. When she did not appear you called again after your birthday stating, "Why don't you come to my house. You're all talk and no do." In April 2000, and again in June 2000, you persisted in your calls stating, "This is Howard", and asking Ms. Ramos if she would come to your house, as you wanted to have casual sex, and if she had changed her mind about having casual sex.

The acts described above, if they occurred as alleged, were in violation of Canons 1, 2 and 3, of the Code of Judicial Conduct. Further, these acts, if they occurred as alleged, would impair the confidence of the citizens of this state in the integrity of the judicial system and in you as a judge, would constitute conduct unbecoming a member of the judiciary, could demonstrate your present unfitness to hold the office of judge, and could warrant discipline, including removal from office, and discipline as an attorney.

PLEASE TAKE NOTICE in accordance with the provisions of the Rules of the Florida Judicial Qualifications Commission, as revised, that you have twenty (20) days following service of this notice to file a written answer to these charges. The original of your response and all subsequent pleadings must be filed with Clerk of the Supreme Court of Florida, and you must also comply with the requirements of the Supreme Court requiring simultaneous filing of a DOS formatted three and one-half diskette in Word Perfect 5.1 (or higher) format. Copies of your response should similarly be served on the undersigned General Counsel and all persons (other than your counsel) listed in the certificate of service below.

Dated this _____ day of November, 2000.

INVESTIGATIVE PANEL OF THE
FLORIDA JUDICIAL QUALIFICATIONS
COMMISSION

By _____
Thomas C. MacDonald, Jr.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via United States Certified Mail, Return Receipt Requested, Receipt # _____ to the Honorable Howard C. Berman, Circuit Judge, Fifteenth Judicial Circuit, Palm Beach County Courthouse, 205 N. Dixie Highway, West Palm Beach, Florida 33401-4522 and by facsimile and U.S. Mail to Sidney A. Stubbs, Jr., Esq., Facsimile number (561) 650-0409 and Post Office Box 3475, West Palm Beach, FL 33402-3475; and by U.S. Mail to The Honorable Harvey L. Goldstein, Chair of the Hearing Panel, 714 Dade County Courthouse, 73 West Flagler Street, Miami, FL 33130; Brooke S. Kennerly, Executive Director, 400 S. Monroe, The Historic Capitol, Room 102, Tallahassee, FL 32399; and, John R. Beranek, Esq., Counsel to the Hearing Panel, Post Office Box 391, Tallahassee, FL 32302-0391 on this _____ day of November, 2000.

Attorney